

REMARKS

Reexamination and reconsideration of claims 1-27, 29-42, and 44 are respectfully requested. **Additionally, rejections of record in the last Office Action and this Office Action rely on publication WO 99/53353 to Heinz et al.; however, the publication is not acknowledged with initials on the IDS which it is listed (reference AR on the IDS attached hereto). Applicants respectfully request that the Examiner correct this oversight and list the reference on a PTO-892 form. Additionally, Applicants have also included an English equivalent for the publication.**

Claims 1-5, 7-9, 11, 13-23, 26, 28, 30 and 31 were rejected under 35 U.S.C. sec. 102(b) applying WO99/53353 (the '353 publication). The '353 publication requires a fiber optic cable having two profiled bodies that are inserted into each other, thereby providing a chamber that has a seal. See the Abstract of the '353 publication. For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

It is respectfully submitted that the Office Action misinterpreted the '353 publication. Moreover, the Office Action is making an unsupported construction for a phrase in the claims.

First, the Office Action states that "Heinz et al [the '353 publication] teaches that the inner strength member is inserted [in]to an outer strength member (AS) (see page 3 lines 18-22), fitted, or seated with a snug fit." See p. 2 of the Office Action dated December 17, 2003. The '353 publication is clear that the two profiled bodies act together in closing off the chamber of the cable. Specifically, "...the outer surface of one of the profiled bodies closes off the longitudinal gap of the other of the two profiled bodies resulting in a chamber being closed off as a protective tube sealed as far as possible all around." See the p. 3, ll. 21-26 of the English Equivalent of

the '353 publication. Moreover, in order to access the optical fiber the profiled bodies must be taken apart.

On the other hand, claim 1 recites, *inter alia*, a strength member comprising a sheet manufactured in a forming process having at least one fiber access opening leading to at least one formed area...[****]...at least one optical fiber component disposed within the at least one formed area so that the at least one optical fiber component can be accessed at the fiber access opening without substantially disturbing the strength member. Since the chamber of the '353 publication must be closed off, it does not teach each and every feature of claim 1 because the profiled bodies must be disturbed by taking them apart to access the optical fiber. Likewise, the '353 publication does not teach each and every feature of claims 17 and 32. Thus, for at least these reasons the rejection of claims 1-5, 7-9, 11, 13-23, 26, 30 and 31 is warranted.

In making the sec. 102(b) rejection, the Office Action makes an unsupported claim construction by stating:

Heinz et al [the '353 publication] teaches that the inner strength member is inserted [in]to an outer strength member (AS) (see page 3 lines 18-22), fitted, or seated with a snug fit. This means that the outer strength member can be removed without disturbing (breaking) the inner strength member. Thus, the fiber can be accessed at the fiber access opening without substantially disturbing the strength member.

Specifically, the Office Action is making an unsupported construction of the phrase "at least one optical fiber component can be accessed at the fiber access opening without substantially disturbing the strength member." In other words, the construction given by the Office Action is that "substantially disturbing the strength member" means "breaking" the strength member. Neither the claims, nor the specification, of the present invention recite "breaking" or describe substantially disturbing the strength member as "breaking" or "not breaking"

the strength member. Instead, the Office Action provides a construction of the phrase that is contrary to the plain meaning of the phrase and unsupported by any objective evidence of record.

Clearly, "breaking the strength member" is extremely different from "disturbing the strength member." Moreover, the Office Action gives absolutely no citation to the record, nor any reasoning, for how this construction is supported by evidence.

Besides taking a position that is unsupported by any objective evidence of record, the Office Action is constructing a meaning for the phrase of claim 1 that is contrary to the plain meaning of the phrase. Applicants point out that the plain meaning of "disturb" is "...**b**: to alter the position or arrangement of..." See Merriam-Webster's Collegiate Dictionary, tenth edition, p. 338.

On the other hand, the plain meaning of "breaking" is "...**a**: to separate into parts with suddenness or violence...**e**: to render inoperable <broke his watch>..." See Merriam-Webster's Collegiate Dictionary, tenth edition, p. 140. No objective evidence of record supports the Office Action's construction/meaning for the recited phrase. Moreover, whether the strength members are broken or not during fiber access is irrelevant since the claims do not recite the same. **If necessary, Applicant requests a telephone interview to discuss how the Office Action's construction of the phrase is supported by any objective evidence of record.**

Rather, the objective evidence of record shows that the position and arrangement of the profiled bodies of the '353 publication must be changed, i.e., disturbed, since they are peeled or pulled apart to access the chamber holding the optical fiber. Simply stated, the profiled bodies of the '353 publication must be taken apart, i.e., disturbed, in order to access the optical fiber within the chamber. Moreover, the '353 publication states the same. Thus, the objective evidence of

record shows the rejection is traversed.

Contrast with the present invention, where the craftsman can perform a simple and efficient fiber access operation. Specifically, the craftsman need only: (1) run a utility knife across the cable cutting into the cable jacket; and (2) peel back the cable jacket, thereby advantageously accessing the optical fiber disposed within the retention area. For at least these reasons, withdrawal of the sec. 102(b) rejection of claims 1-5, 7-9, 11, 13-23, 26, 30 and 31 is warranted and is respectfully requested.

Claims 1 and 17 were rejected under 35 U.S.C. sec. 102(b) applying U.S. Pat. No. 4,852,966 (the '966 patent). Applicants again respectfully assert that the '966 patent was misinterpreted in the Office Action because it does not disclose, teach, or otherwise suggest each and every feature of the claims. For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

The '966 patent requires an optical cable element consisting of a corrugated sheet 4 requiring tapelike sheets 2,3 secured to both sides using adhesive and optical waveguides disposed in spaces between the same. See the Abstract of the '966 patent. In other words, the optical fibers are required to be enclosed in a chamber formed by the tapelike sheets 2,3 and the corrugated sheet 4. Since the fiber are enclosed in respective chambers the '966 patent does not have a fiber access opening as stated, rather one of the tapelike sheets 2,3 must be peeled from corrugated sheet 4. Moreover, this rejection uses the same erroneous phrase construction/meaning as used above. See p. 4 of the Office Action dated December 17, 2003. For at least this reason, the rejection is traversed.

For clarity purposes, Figure 1 of the '966 patent illustrates a portion of the cabling element where the ends of

corrugated sheet 4 are phantom lines that continue onward. Moreover, the '966 patent relates to a cable that employs twisted cable elements that are formed into a stable tube by the hollow-tube winding technique as shown in Fig. 3. See the '966 patent at Col. 2, ll. 28-30. It would be understood that if the optical fibers were not enclosed in the respective chambers, they would pop-out when the cable element was twisted to form the hollow tube. Thus, corrugated sheet 4 extends to one of the tapelike sheets where it is attached, thereby forming a closed chamber. For at least these reasons, withdrawal of the sec. 102(b) rejection of claims 1 and 17 is warranted and is respectfully requested.

Claims 10, 24, and 25 were rejected under 35 U.S.C. sec. 103(a) applying the '353 publication in view of U.S. Pat. No. 6,137,936 ('936). The sec. 103(a) rejection of claims 10, 24, and 25 is respectfully traversed for the reasons stated above with respect to claims 1 and 17. For at least this reason, withdrawal of the sec. 103(a) rejection of claims 10, 24, and 25 is warranted and is respectfully requested.

Claims 12, 27, and 32-44 were rejected under 35 U.S.C. sec. 103(a) applying the '353 publication without a teaching reference. The sec. 103(a) rejection of claims 12, 27, and 32-44 is respectfully traversed for the reasons stated above with respect to claims 1, 17, and 32. For at least this reason, withdrawal of the sec. 103(a) rejection of claims 12, 27, and 32-44, and 44 is warranted and is respectfully requested.


Claims 6 and 29 were rejected under 35 U.S.C. sec. 103(a) applying the '966 patent without a teaching reference. The sec. 103(a) rejection of claims 6 and 29 is respectfully traversed for the reasons stated above with respect to claims 1 and 17. For at least this reason, withdrawal of the sec. 103(a) rejection of claims 6 and 29 is warranted and is respectfully requested.

No fees are believed due in connection with this Reply. If any fees are due in connection with this Reply, please charge any fees, or credit any overpayment, to Deposit Account Number 19-2167.

Allowance of all pending claims is believed to be warranted and is respectfully requested.

The Examiner is welcomed to telephone the undersigned to discuss the merits of this patent application.

Respectfully submitted,


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Date: February 10, 2004